

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JOHN JOSEPH SACKLEH

v.

JOHNSON & JOHNSON

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Civil No. – JFM-10-3567

MEMORANDUM

This action is on remand from the District of Minnesota where it was pending in a multi-district litigation proceeding. Defendants have filed a motion for summary judgment. The motion will be granted.

Defendants rely upon the “learned intermediary doctrine,” which is well established under Maryland law. See, e.g., *Ames v. Apothecan, Inc.*, 431 F. Supp. 2d 566, 572 (D. Md. 2006), citing *Lee v. Baxter Healthcare Corp.*, 721 F. Supp. 89, 94-95 (D. Md. 1989). Defendants allege that the product that is the subject of this suit, LEVAQUIN®, was prescribed to plaintiff by James K. Smolev, M.D., a urologist. On deposition Dr. Smolev testified that he had received and read the package insert that had been provided which to him and that was in effect at the time that he prescribed LEVAQUIN® to plaintiff as part of his treatment. The insert expressly warned that a possible effect of taking LEVAQUIN® is a rupture to the Achilles tendon, the injury suffered by plaintiff.

Dr. Smolev was fully aware of this risk, as his deposition reveals. The fact that, as stated in the warning, there was an increase in the risk of a rupture to the Achilles tendon for the elderly taking a corticosteroid steroid did not make the warning confusing, as alleged by plaintiff. Thus, the fact that plaintiff was taking a corticosteroid steroid and was not elderly when he took

LEVAQUIN® (he was only 43 years old) and sustained a rupture to his Achilles tendon is of no moment. Indeed, Dr. Smolev's further testimony that, based upon his diagnosis of plaintiff, he would have prescribed LEVAQUIN® for him, confirms the immateriality of plaintiff's age.

A separate order granting the motion for summary judgment filed by defendants is being entered herewith.

Date: January 9, 2015

/s/
J. Frederick Motz
United States District Judge